THE HON'BLE SRI JUSTICE B.PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE D.APPA RAO

-

WRIT APPEAL NO.39 OF 2000

(DATED : 04.04.2006)

Between:

The Senior Divisional Manager, L.I.C of India

P.B.No.411, Jeevan Prakash Road, Visakhapatnam and others

…Appellants

A n d

B.V.S.Mani

…Respondent

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

AND

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–

WRIT APPEAL NO.39 OF 2000

JUDGMENT: (Per Hon'ble Sri Justice B.Prakash Rao)

Heard Sri M.V.Suresh, learned counsel appearing for the appellants and Sri V.Ch.Naidu, learned counsel appearing on behalf of the respondent herein.

The appellant herein which is the management seeks to assail the order dated 12.11.1999 passed in W.P.No.9763 of 1993 filed by the respondents herein *inter alia* seeking for a *Mandamus* to appoint either of them in a suitable post on compassionate grounds in the appellant-Corporation as a consequence of the death of 1st petitioner's husband.

The facts in brief, which are necessary for disposal of this appeal are that the petitioner No.1 is the widow and petitioner No.2 is the son of B.S.N.Murthy, who was an employee working with the respondent-Corporation herein as Assistant. However, suddenly, he died on 25.10.81 due to heart attack. The petitioner No.1 made a representation to the respondent-Corporation on 1.7.1982 seeking appointment on compassionate grounds. The said application was rejected by order dated 30.8.85. In spite of the said rejection, the petitioner No.1 again made a representation on 21.11.85 seeking for appointment to any suitable job in the Corporation. The same was rejected again by the Corporation. The petitioner No.1 continued to make representation by application, dated 31.8.1991, which was also rejected by order dated 9.12.1991.

Contesting the claim of the writ petitioners, the case of the appellant was that, in fact, petitioner No.1 who is the widow was not qualified and the question of appointment of petitioner No.2, who was minor at the relevant point of time, does not arise. Therefore, both of them are not entitled to seek any appointment on compassionate grounds since either way they are not qualified.

The learned single Judge though agreeing with the fact that either of the writ

petitioners are not qualified to seek any such appointment, however, allowed the writ petition only to the extent of awarding compensation of Rs.80,000/- (Rupees eighty thousand only) to the petitioner No.1 for wrongfully refusing to consider her case. The main reasoning given by the learned single Judge was that though the deceased died on 25.10.1981, application for appointment on compassionate grounds was made after ten long years. The scheme requires that application should be made within one year from the death of the employee. The application of petitioner No.1 was rejected on 30.8.1985 and subsequent applications were also rejected. Therefore, there is considerable delay in considering the case of first petitioner. Hence damages.

Having heard the counsel on either side and on perusal of the material, it is quite amply clear that there is absolutely no answer on the part of the respondent herein as to how and on what basis she can seek appointment with the appellant-Corporation. According to the appellants, the first respondent herein is not qualified and considering the case of 2nd respondent does not arise. The learned single Judge also found that either of the respondents herein is entitled to seek any appointment to any post. However, more delay on the part of the appellants herein in considering the case of the respondents herein was the main basis for awarding compensation. Having regard to the admitted fact that the respondents are not qualified to seek any appointment with the appellant-Corporation, the question of delay does not arise. However, in case, if it is found that the respondents are fully qualified and there has been negation on the part of the appellants herein in considering their case, the question of awarding damages does not arise. Further, this Court in exercise of power under Article 226 of the Constitution of India cannot give any such direction.

The writ appeal is accordingly dismissed and the amount deposited by the appellants is permitted to be withdrawn by the respondent. No costs.

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B.PRAKASH RAO, J

D.APPA RAO, J

4.4.2006

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THE HON'BLE SRI JUSTICE B.PRAKASH RAO

AND

THE HON'BLE SRI JUSTICE D.APPA RAO

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WRIT APPEAL NO.39 OF 2000

(Judgment of the Bench delivered by

Hon'ble Sri Justice B.Prakash Rao)

DATED: 04.04.2006